

[REDACTED]

18 December 1989

MEMORANDUM

SUBJECT: Assessing the Judicial Process in El Salvador

1. The Salvadoran criminal justice system remains the weakest and least developed of the country's democratic institutions. In our judgment, the military, the civilian elites, and the extreme left all routinely circumvent or manipulate the formal judicial process. The government, for its part, has failed to allocate adequate resources or to address the systemic structural problems that impede the administration of justice in El Salvador. As a result, we believe most Salvadorans regard the formal judicial system as, at best, barely functioning. They probably believe the alternative--in which security and vigilante forces controlled by the military and civilian elites dispense their own versions of justice on an ad hoc basis--still predominates; Poor Salvadorans judge that the judicial process, although enshrined in a new constitution, is capricious and serves principally the interests of the rich and powerful.

2. Despite improvements over the past five years, we judge that the economically and politically powerful do control the judiciary in El Salvador. The process of selecting judges sustains a pattern of political cronyism. The ARENA dominated National Assembly, for example, elects the 14-member Supreme Court, which in turn appoints the 300 or so local judges. Although the occasional competent and independent justice does emerge, the norm is a poorly-trained judiciary, highly susceptible to manipulation by the party in power. In a recent gathering of Intelligence Community and other analysts, there was general agreement that ARENA leader Roberto D'Aubuisson had successfully packed the Supreme Court with justices sympathetic to his ideology and susceptible to his influence.

3. [REDACTED] indicate that archaic procedures, inadequate facilities, intimidation of justices and witnesses, and corruption continue to hinder the judicial process. The historical record shows that a combination of these factors has weighed heavily in the repeated failure of the government--despite pressure from the United States--to conclude a number of high-profile cases involving politically motivated killings. For example, in the important "kidnapping for profit" case--for which judicial proceedings began in 1986--involving two

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military officers as defendants, a judge was assassinated after announcing that he intended to press the case, his successor dropped serious charges and transferred it to another court, and the new judge, hours before his term ended, released the defendants. Pressure from the United States prompted then-president-elect Cristiani--aware that this was a major test of his intentions on human rights--to use his political influence to have the release decision rescinded.

4. We believe the deficiencies in the judicial system could have a similar impact on the case of the recent Jesuit killings, especially if military personnel or right-wing groups were involved. Even if the investigation leads to the arrest of suspects, the judges and witnesses probably will come under extreme pressure from those elements involved that do not want a prosecution. Moreover, Salvadoran investigative bodies are unlikely to be able to produce acceptable and sufficient physical evidence to satisfy the procedural requirements of the courts. We would expect the security services to give only grudging--and incomplete--cooperation if military officers are involved.

5. The relationship between the judiciary and the military, particularly in a human rights case, has always been difficult. Historically, civilian judicial authority has not extended to the officer corps--even President Duarte, when he assumed office in 1984, chose not to endanger his relations with the military by seeking prosecutions for past crimes. Although lower ranking military personnel are occasionally dismissed from the security services or turned over to the civilian courts for criminal activity--sometimes even for involvement in politically motivated killings--it is customary for officers to steadfastly protect their colleagues and for judges to be hesitant to bring charges. [REDACTED] notes that no officer has been convicted in recent years, despite clear evidence of military involvement in several human rights abuse cases. Officers accused in one incident are now in custody.

6. In addition to manipulation by the military and the political parties, the Salvadoran justice system also is routinely targeted by the guerrillas. The FMLN has announced that it considers justices to be "military targets." Many judges have resigned during the past year in response to direct threats. The assassinations of the Attorney General in April, and of the former President of the Supreme Court in November, were major blows to the legal profession and present strong disincentives for competent individuals to participate in the judicial system. The insurgents have also been known to bribe and intimidate judges and witnesses in cases involving FMLN supporters.

7. Although President Cristiani realizes that a more credible system of criminal justice would enhance international

guerrillas. Such pronouncements, however, are likely to be tolerated and even encouraged by the guerrillas because of their propaganda value.

Q: What is the state of the FMLN's relations with the civilian population and what is the movement's overall strategy?

A: The FMLN's waning popular support at home is its principal vulnerability, in our view. Although the insurgency maintains a following among a small, vocal segment of the urban population and among peasants in areas with a large guerrilla presence, most Salvadorans do not look to the FMLN as a solution to their problems. Indeed, as the guerrillas' prospects for a quick military victory have faded, the FMLN has resorted increasingly to intimidation and outright terror to obtain food, money, and other support from the civilian population.

[REDACTED] indicates that in recent years the FMLN has been responsible for the majority of human rights abuses in El Salvador. Those who defy the guerrillas or who are considered government collaborators--such as mayors, civilian bureaucrats, and, at times, even registered voters--are subject to execution. Between January and August 1988, for example, the insurgents accounted for about two-thirds of the 130 confirmed political killings. That figure does not include civilian deaths--37 during the same period--from insurgent landmines and booby traps. FMLN recruits, many of whom are women and children, often are kidnapped or coerced into the movement, and civilians pay "war taxes" to help defray FMLN expenses. Rural development projects and lightly-armed civil defense units are favored guerrilla targets.

Strategic Objectives

The FMLN is pursuing a multidimensional strategy--composed of political, military, economic, and diplomatic elements--intended to weaken and de-legitimize the government to the point where it will fall before an insurgent-orchestrated mass insurrection or, at a minimum, be forced into negotiations under terms favorable to the guerrillas.

Political. The FMLN, using front groups and other organizations sympathetic to its cause, seeks to discredit and undermine the government by creating an atmosphere of popular unrest. The guerrillas orchestrate anti-government demonstrations which often turn violent, because pro-FMLN marchers generally try to provoke security forces into overreacting. The indiscriminate use of urban violence has increased as the FMLN has expanded its operations in San Salvador. Bombings--including the use of car bombs--rocket attacks on public buildings, and machinegun attacks on buses have placed civilians at risk. The guerrillas have also stepped up their attacks on US facilities and officials.

The guerrillas also operate an effective international propaganda machine, and they work to form new underground cells of supporters. The FMLN, seeing propaganda opportunities and potential for expanding its political organization has tacitly approved the participation of its political allies in the March 1989 presidential election. Nevertheless, some guerrilla commanders remain, in principle, opposed to elections.

Military. The FMLN's approximately 6,700-7,600 guerrillas generally carry out low-risk, high-visibility actions intended to "bleed" the 57,000-man Salvadoran Army while keeping their own forces intact. The insurgents rely mostly on hit-and-run attacks on isolated outposts, ambushes, sabotage, and terrorism. On occasion, the FMLN will attempt a well-planned and rehearsed attack on a major military target in order to attract media attention and demonstrate its military prowess.

Economic. The FMLN has intensified sabotage and attacks on economic targets during the past year in an effort to heighten its military profile with minimal risk of sustaining casualties. The insurgents also hope to exacerbate the country's persistent economic problems, thereby fueling popular discontent.

Diplomatic. The FMLN--generally operating through its political ally, the FDR--pursues contacts among sympathetic groups in Western Europe and the United States. These groups enhance the legitimacy of the insurgency as well as provide financial support. Key guerrilla leaders currently are visiting various Latin American and other foreign governments in a highly-publicized bid to boost their own legitimacy and rally support for negotiations.